

### **REMARKS**

In the Final Office Action of October 24, 2006, claims 1 and 20 were rejected under 35 U.S.C. § 101. Claims 1-14, 16-34 and 36-53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Yang in view of Lewis, and claims 15 and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Yang in further view of Lewis and further in view of McGregor. Claims 1 and 20 have been amended and claim 54 has been newly added.

#### **Rejection Under 35 U.S.C. § 101**

Claims 1 and 20 have been amended and claim 54 has been newly added. Claims 1 and 20 were rejected by the Examiner as being unpatentable under 35 U.S.C. § 101 for claiming a data structure that is not embodied in a computer-readable media, and because they claim a data structure that does not create a relationship among data elements specific to a data manipulation function. The Applicant respectfully traverses this rejection.

Initially, the claimed “data structure” in claims 1 and 20 already complies with the IEEE Standard Dictionary of Electrical and Electronics terms. The definition under the IEEE Standard Dictionary of Electrical and Electronics Terms is “a physical or logical relationship among data elements, designed to support specific data manipulation functions.” The provisioning request message defined in claims 1 and 20 contain several sections which are “to trigger the provisioning event” in claim 1 and causes “the provisioning event to occur” in claim 20.

Further, claims 1 and 20 are not directed to data structures, but rather are directed to “a system for triggering a provisioning event in a service provider” and “a computer readable medium for storing data for access by an application program being executed on a data

processing system” respectfully. In In re Allapat, the U.S. Court of Appeals for the Federal Circuit reversed an examiner’s rejection of claims directed to a rasterizer for creating a waveform because the claims were directed to a machine, which constitutes patentable subject matter under 35 U.S.C. § 101. In re Allapat, 33 F.3d 1526, 1542 (Fed. Cir. 1994). A system, and a computer readable medium are also machines or apparatuses for which patent protection may be obtained.

### **Rejection Under 35 U.S.C. § 103**

The Applicant respectfully and strongly disagrees with the Examiner’s continued rejection of the claims under Yang, Lewis and McGregor. However, the Applicant has amended claims 1 and 20 and added claim 54 to further clarify the claim limitations.

Claim 1 recites “the provisioning system in communication with the external system and the service provider, wherein the service provider is operable to communicate with the entity to cause the provisioning event to occur in response to receiving the provisioning request message from the provisioning system.” Claim 1, therefore, clearly claims four elements needed to complete the triggering of a provisioning event: (1) a provisioning system; (2) an external system; (3) an entity; and (4) a service provider (*see* p. 3, lines 3-21). According to the claim and the specification, the service provider is in communication with the provisioning system and the entity, where the entity is present within the mobile data service of the service provider. The provisioning system is in communication with the external system and the service provider, but not the entity. Neither Yang nor Lewis disclose these elements.

Yang discloses a call center that can be contacted to purchase some sort of service. *Yang*, ¶ 42. A user can request a new service by contacting the call center. The call center can

subsequently issue the service directly to the mobile device, regardless of the service provider. *Yang*, ¶ 45. Because there is communication directly between the call center and the mobile device, either the provisioning system or the external system is not present in *Yang*. The Examiner responds to this argument by citing *Yang* ¶ 47, which allows for a call center *or other entity* to “determine that an application program should be updated or replaced...” However, the “other entity” is an alternative to the call center, and therefore, *Yang* does not disclose an external entity determining the service to be updated, and a provisioning system in communication with the service provider to trigger the provisioning event.

Therefore, claim 1, and claims 2-19 dependent from claim 1 are not obvious over *Yang* and *Lewis*. Further, claims 20, and newly added claim 54 contain limitations similar to those discussed above, and therefore, all claims are patentable over the prior art.

### **Conclusion**

For at least the reasons above, the Applicant submits that the claims are in condition for allowance. The Examiner is respectfully requested to pass this case to issue.

Respectfully submitted,

JONES DAY

A handwritten signature in black ink, appearing to be 'J. M. Sauer', written over a horizontal line.

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